

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,

Plaintiff,

Criminal No. 08-0303

ELECTRONICALLY FILED

v.

GARY STEPHANY,

Defendant.

**ORDER OF COURT ON DEFENDANT'S
MOTIONS AT (DOCS. NO. 25, 28 AND 29)**

After careful consideration of the defendant's pretrial motions for discovery and for notice of Rule 404(b) materials and the government's response thereto, and in light of representations of counsel at the hearing on January 22, 2009, it will be ordered as follows:

With regard to defendant's Motion for Discovery (doc. no. 29) and Motion Requesting Notice Pursuant to Rule 404(b) of the Federal Rules of Evidence (doc. no. 25), it appears that defendant's requests have been met, and therefore these motions are DENIED as moot.

With regard to defendant's Motion for Early Disclosure of Jencks Act Material (doc. no. 28), ordinarily courts cannot order the government to provide "strictly" Jencks Act statements and reports prior to the time a witness has testified on direct examination at trial. *United States v. Goggins*, 2009 WL 275557, at *3 (W.D.Pa. 2009) (Jencks Act, 18 U.S.C. § 3500(b), requires government to disclose prior recorded statements of its witnesses, when related to the subject matter of their testimony, after each witness testifies on direct examination), citing *United States v. Weaver*, 267 F.3d 231, 245 (3d Cir. 2001); *United States v. Mais*, 2006 WL 3308429, *4 (W.D.Pa. 2006) (Cerccone, J.) (ruling that the government shall produce all *Brady* impeachment material no later than ten calendar days prior to trial "has no bearing on the government's

disclosure of information that falls solely under the Jencks Act. It is well-settled that the plain language of the Jencks Act precludes a court from compelling the disclosure of Jencks Act material prior to the completion of a government witness' testimony on direct examination."), citing *United States v. Hill*, 976 F.2d 132, 140 (3d Cir. 1992). Nevertheless, the United States Court of Appeals for the Third Circuit and this Court encourage early disclosure of such material. See *United States v. Starusko*, 729 F.2d 256, 261 (3d Cir. 1984). The government's agreement to turn over Jencks Act materials the week prior to trial is acceptable and reasonable under the circumstances, and defendant's motion for early disclosure is therefore DENIED as moot.

s/ Arthur J. Schwab
Arthur J. Schwab
United States District Judge

cc: All Registered ECF Counsel and Parties